the prescribed rates would not pay even the operating expenses, has declared rates unconstitutional where they were clearly confiscatory. But in cases such as *New York v. Consolidated Gas Company, supra;* and *Knoxville v. Knoxville Water Company, supra,* where the evidence was not clear and convincing and where the court had neither actual experience nor adequate proof by which to judge of the confiscatory nature of the rates, they are to be commended for the caution with which they proceeded before declaring the rates illegal. In both equity and justice the contested rates should be given an actual test prior to the final consideration of the question of the issuance of the permanent injunction, and the Supreme Court by refusing to sanction federal intervention without clear proof of unreasonableness is establishing a precedent which should encourage such a trial of the rate laws, prior to the attempt to have them declared unconstitutional.

MALICIOUS PROSECUTION.. CRIMINAL PROCEEDINGS DISMISSED ON ACCOUNT OF LAPSE OF TIME.

Is the dismissal of a criminal proceeding, obtained by the flight of the defendant from the jurisdiction of the court and remaining absent therefrom, for a sufficient period of time to enable him to procure the dismissal of said proceeding solely on account of lapse of time, such a termination of the action as will support a suit for malicious prosecution? This new and interesting question was decided in the negative by the New York Court of Appeals in the case of *Siegmund E. Halberstadt v. New York Life Insurance Company,* Vol. XL, *New York Law Journal,* No. 86.

The action was brought to recover damages for an alleged malicious prosecution for the crime of embezzlement, claimed to have been instituted in Mexico by an agent of the defendant company against the plaintiff. A warrant for the arrest of the plaintiff was issued by the Criminal Court of the City of Mexico, but it was never executed for the reason that plaintiff avoided arrest by leaving the country and remaining away until a dismissal of the proceeding was procured in accordance with the laws of Mexico, on account of mere lapse of time.

No cases were found which are directly in point and the argument of the plaintiff was founded chiefly on *dicta.* In the case of *Clark v. Cleveland,* 6 Hill 344, the court said: "I by no

means accede to the doctrine inadvertently advanced by some judges, that all right to prosecute for the offence must be terminated by a technical acquittal. Nor can it be essentially necessary that there should be an adjudication by the magistrate, or, indeed, any judicial decision upon the merits, by any court, as seems to be supposed by some." This doctrine is much broader than the facts and circumstances of the case required, and as the court decided against the plaintiff on the ground that there had not been a sufficient termination of the prosecution to support an action for malicious prosecution, the force of the rule is greatly lessened.

The case of *Coffey v. Myers,* 84 Ind. 105, is also much relied on by the plaintiff. The facts bear a striking resemblance to those in the present case, in that the defendant in the criminal proceeding avoided arrest by escaping from the state. But in that case, the criminal charge was the result of a conspiracy to injure the defendant, and was known to be false. The charge was bastardy and the flight of the defendant was not due to his guilt but to the fear of his inability to establish his innocence.

In *Robbins v. Robbins,* 133 Ind. 597, it was said: "It cannot in reason make any difference how the criminal prosecution is terminated, provided it is terminated, and at an end." Here also we find that such a broad rule is not supported by the actual decision. The plaintiff was arrested upon a police warrant and after a hearing discharged upon her promise not to further molest the defendant.

The other cases cited by the plaintiff are readily distinguishable from the case at bar, in that the prosecutions were terminated, either by the entry of a *nolle prosequi,* or the abandonment of the criminal charge.

To support an action for malicious prosecution the termination of the proceeding must, in general, be a final acquittal. *Bacon v. Towne,* 4 Cush. 217. This general proposition is held by a long line of cases, but perhaps as good a statement of the law on the subject as can be found is that laid down by the court in *Lowe v. Waterman,* 47 N. J. Law 413. "A criminal prosecution may be said to have been terminated where there is a verdict of not guilty; where the grand jury ignore a bill; where a *nolle prosequi* is entered, and where the accused has been discharged from bail or imprisonment."

The court in its opinion discussed a number of cases which sub-

stantiate the above doctrine, but no cases are cited in which the dismissal of the proceedings was due to technical statutory reasons, as in the case at bar. This very question arose in the case of *Sears v. Hathaway,* 12 Cal. 277. The defendant had caused the plaintiff to be arrested on the charge of concealing property with intent to defraud and delay creditors. The statute provided that in such cases the fraud must be evidenced by writing and in the absence of such evidence the accused was acquitted. The court in its decision said: "A party who stands before a jury in such a case as this on pure technical law, for a defense against an act of moral turpitude, and claiming a discharge because his prosecutor has not pursued a statutory mode of proof to convict him of a crime punishable by the statute, may congratulate himself that the precautions of the law have availed him to escape its merited penalty; but he certainly ought not to have in addition to this immunity, a right to claim a small fortune from his victim for having mistaken the remedy, or not having been as well versed as himself in technicalities which sometimes shield guilt from public justice." Here we have an action which was terminated by a jury's verdict of not guilty. Still the court held that it was not such a termination as would support a suit for malicious prosecution except perhaps to the extent of the amount actually expended by the accused in defending the action.

Another question presented was whether or not the mere issuance of a warrant on a criminal charge constitutes such a prosecution as will give rise to a right of action in the party claimed to have been injured. The courts of the several states are in conflict on this question. The New York court, in sustaining this right, has adopted the rule which is probably supported by the weight of authority and which as the court says should be adopted "if for no other reason than to satisfy the principle of law which demands an adequate remedy for every legal wrong." However, the court was divided on this question, and Justice Vann filed a strong dissenting opinion. All the justices concurred in the result.

WHEN FEDERAL COURTS MAY ENJOIN STATE TRIBUNALS.

In sustaining the action of the Circuit Court, the Supreme Court of the United States placed a new interpretation upon the Act of Congress which protects state courts that have acquired